**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| **In the Matter of** | ) | |
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| **Petition for Declaratory Ruling Regarding Intercarrier Compensation for IP-Originated Calls** | ) ) ) | **WC Docket No. 05-283** |

**COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC**

Cincinnati Bell Telephone Company LLC ("CBT") submits these Comments in response to the Commission's October 12, 2005 Public Notice regarding Grande Communications, Inc.'s ("Grande") petition for declaratory ruling regarding the self-certification of Internet protocol ("IP") originated traffic that terminates on the public switched telephone network ("PSTN").[1] Specifically, Grande seeks a declaratory ruling that: 1) a local exchange carrier ("LEC") may properly rely on a customer's certification that the traffic being sent originates in IP format at the calling party's premises and therefore undergoes a net protocol conversion, or is otherwise enhanced, IP-enabled traffic; 2) a LEC may send such certificated traffic to other terminating LECs over local interconnection trunks; and 3) terminating LECs receiving such traffic over local interconnection trunks are to treat that traffic as local traffic for intercarrier compensation purposes and may not assess access charges for such traffic.

Grande's proposal would have far-reaching implications on the access charge regime and broader intercarrier compensation reform and should not be addressed in

[1] *Pleading Cycle Established for Grande Communications' Petition for Declaratory Ruling Regarding Intercarrier Compensation for IP-Originated Calls*, WC Docket No. 05-283, Public Notice, DA 05-2680 (rel. October 12, 2005).

isolation. Therefore, CBT urges the Commission to reject Grande's request for declaratory ruling.

## I. INTRODUCTION

Grande asks the Commission to declare that carriers like Grande, who partner with voice over Internet protocol ("VoIP") providers to terminate VoIP-originated traffic to PSTN end-users of interconnected LECs, are absolved of any responsibility to ascertain whether the traffic the VoIP providers send them is local or long distance. Grande would accomplish this by having the Commission declare that if Grande, or any other carrier that terminates traffic for VoIP providers, obtains a certification from its VoIP partner stating that the traffic it is sending for termination on the PSTN originates in IP-format, that Grande can send it to an interconnected LEC for termination as local traffic, regardless of where the call originated. Furthermore, under Grande's plan it would have no responsibility to verify whether this is true, and cannot later be held liable for access charges if the traffic is ultimately determined to be non-local. Grande contends that this action is needed to prevent the LECs that serve the PSTN end-users from assessing access charges for traffic based on the originating line information (e.g., calling party number) that would indicate that the call is interexchange traffic rather than local.

Grande portrays its request as a simple measure designed to make it easier for carriers that provide termination services for VoIP providers to determine whether traffic destined for the PSTN should be sent to the terminating LEC over access trunks or local interconnection trunks. In essence, however, the ruling Grande seeks is a definitive declaration from the Commission that all VoIP-PSTN traffic is exempt from access charges.

CBT submits that this petition for declaratory ruling is not the appropriate vehicle for deciding whether or not to exempt all VoIP-originated traffic from access charges. As CBT and other parties have explained before, exempting all VoIP-PSTN traffic from access charges would have tremendous implications on ILECs, their customers and the future of universal service and should not be addressed in isolation.[2] Moreover, the issue of how to treat VoIP-PSTN traffic is already before the Commission in several other proceedings, including the Intercarrier Compensation and IP-Enabled Services dockets.[3] The Commission should not circumvent these thorough examinations by ruling on only one part of the issue in the Grande petition.

## II. DISCUSSION

Contrary to Grande's claim that the enhanced services provider ("ESP") exemption applies to most forms of IP telephony, under the Commission's existing rules access charges are still applicable to IP-originated calls that terminate on the PSTN if they originate outside of the LEC's local calling area. The ESP exemption treats ESPs as if they are end users, not carriers, for purposes of allowing them to obtain access to local networks. This allows them to buy from a LEC's local tariff, for example obtaining primary rate interface ("PRIs") connections, rather than from the LEC's access tariff. However, that does not change the nature of the traffic that ultimately terminates on the

[2] See for example, the record in *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1) and Rule 69.5(b)*, WC Docket No. 03-266 (*Level 3 Petition*), including ITTA Ex Parte (March 9, 2005).
[3] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking (rel. April 27, 2001) and Further Notice of Proposed Rulemaking (rel. March 3, 2005); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking (rel. March 10, 2004).

PSTN. Therefore, while VoIP providers may deliver traffic to Grande via local connections, as an intermediate carrier Grande[4] is nonetheless obligated to properly identify the jurisdiction of the traffic it delivers to interconnected LECs for termination and pay either access or reciprocal compensation depending on the where the traffic originated. Thus, although the VoIP provider may be able to benefit from the ESP exemption, the benefit does not extend to Grande when it delivers interexchange voice traffic to LECs for termination. Even though these calls may originate in IP format they still use the PSTN in exactly the same manner as other long distance calls and should be treated the same. Under the existing rules, that means that these calls should be sent to the terminating LEC over access trunks and assessed access charges. The ESP exemption applies only when the LEC's services are being used to connect the ESP to its own subscribers so that these subscribers can access the information services provided by the ESP.[5] VoIP traffic delivered by Grande for termination on the PSTN does not fall under the ESP exemption because Grande is not an ESP.

Most interconnection agreements prohibit carriers from sending long distance traffic over local interconnection trunks. However, sometimes ILECs, including CBT, find that interconnected LECs are sending them traffic over local interconnection trunks that originated outside of the local calling area. This is usually discovered by the fact that the calling party number ("CPN") contained in the originating line information is not a local number.[6] When this occurs, the ILEC has two choices, either refuse to terminate

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[4] Grande explains that it is a carrier (see Grande Petition at pp. 1-2), and does not claim that it is an ESP.
[5] See Opposition of SBC Communications, Inc., *Level 3 Petition,* at pp. 13-18, (March 1, 2004).
[6] However, in this case, section 4 of Grande's customer service agreement (attached to its Petition) specifically requires Grande's customer to supply it with CPN/ANI information for each call, so that Grande can determine the jurisdiction of the call and also provides that calls received without such information will be treated as interstate. Therefore, Grande has no excuse for not using CPN/ANI

the call since the interconnected carrier has violated the terms of the interconnection agreement or terminate the call but assess the carrier at the access charge rate rather than the reciprocal compensation rate. CBT assumes that the interconnected LEC has made an honest mistake in sending the traffic over local trunks rather than access trunks and completes the call, but at the correct access rates.

What Grande is suggesting in its petition is that regardless of whether the originating line information indicates that the call is a long distance call, if the VoIP provider that is using Grande's services tells Grande that the call originated in IP format, the call is local, regardless of the fact that it originated outside of the local calling area of the terminating LEC. The result would be a gross perversion of the ESP exemption which would quickly undermine the existing access charge system.

Because the terminating LEC would be prevented from questioning the nature of the traffic received from an interconnected LEC and the interconnected LEC would have no incentive to verify the accuracy of the VoIP provider's certification, the amount of long distance traffic terminated over local interconnection trunks will rapidly escalate and access charges will decline. Given the significant differences between access charge rates and reciprocal compensation rates for most ILECs, including CBT, the impacts on the ILECs will severe.[7] Revenue reductions of this magnitude will constrain the ILEC's ability to maintain and improve their networks and provide the universal availability to the PSTN that is vital in fulfilling their carrier of last resort obligations.

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information to route all calls it receives to a terminating LEC over access or local interconnection trunks, as appropriate.

[7] Assuming that most of this traffic would be compensated at the $0.0007 reciprocal compensation rate, CBT could lose almost 90% of its switched access revenue.

CBT believes that it would not be in the public interest to decimate the access charge system in this cavalier manner. Although CBT recognizes that the existing intercarrier compensation system is fraught with loopholes (the worst of which is the ESP exemption) and inconsistencies, it should be revised in a comprehensive manner, not the piecemeal, backdoor approach advocated by Grande.

## III. CONCLUSION

For the foregoing reasons, CBT urges the Commission to deny Grande's request for declaratory ruling because it would undermine the access charge system and jeopardize the stability of the PSTN. The appropriate vehicle for addressing the large intercarrier compensation issues implicated by Grande's petition is the comprehensive Intercarrier Compensation proceeding. The development of a comprehensive intercarrier compensation regime will make the issues raised in the Grande petition moot and as a result, CBT submits that it is inappropriate to address the Grande petition at this time.

Respectfully submitted,

/s/ Douglas E. Hart

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the 12th day of December 2005, I served a copy of the forgoing Comments of Cincinnati Bell Telephone Company upon each of the parties on the attached service list via First Class Mail, postage prepaid or via electronic filing.

/s/ Patricia L. Rupich
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